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The politics of legal prosecution

*“L’agitation contre-révolutionnaire” en Union soviétique pendant la Grande Guerre patriotique. La politique des poursuites judiciaires*

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# "Counter-revolutionary agitation" in the Soviet Union during the Great Patriotic War

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- 1 The outbreak of war between the Soviet Union and the Nazi Germany affected Soviet society in multiple ways, one of which concerned popular opinion about the nature and efficiency of the Soviet regime. Court statistics from 1941-1942 recorded a distinct rise in the number of counter-revolutionary crimes committed after June 22, 1941. In particular, this increase involved politically unacceptable speech qualified according to Article 58.10 of the Criminal Code of the RSFSR as "counter-revolutionary agitation and propaganda." By examining surveys of the legal prosecution of this crime, which the Supreme Court of the USSR produced in 1941-1942, I want to answer three questions: How did the Soviet legal system operate as an instrument of establishing and supporting socio-political hierarchies? How did the War change the judiciary's approach to perceived political dissent? Finally, what were the implications of this change on the relationship between the ruling regime and the Soviet population?
- 2 These questions have escaped previous research. Peter Solomon's groundbreaking and meticulously researched monograph on the history of Stalinist criminal justice omits the war period altogether.<sup>2</sup> An article by Sarah Davies, devoted to the prosecution of counter-revolutionary propaganda and agitation, ends in 1939.<sup>3</sup> Such chronological choices imply that the War was a turning point in the history of Soviet popular opinion and legal political repression. Yet the nature and the scope of the implied change remain unexplored.
- 3 According to judicial practice reviews conducted by the Supreme Court, there was little difference in the content of speech prosecuted as counter-revolutionary agitation during

the war compared to the prewar period. As in the 1930s, Soviet citizens expressed their dissatisfaction with various social and economic policies, complained about living standards, distrusted claims of the official press, and spoke irreverently about the behavior and personal qualities of state leaders.<sup>4</sup> Naturally, the War introduced some new themes. Many people felt the need to rationalize the Red Army's initial defeats and found explanations in recent Soviet history. One such popular interpretation contended that the NKVD had eliminated the best military commanders during the Great Terror. Another explanation blamed prewar Soviet economic policies (first of all, the collectivization of agriculture) for destroying the country's economy and, along with that, undermining popular loyalty.<sup>5</sup> Overall, however, the War not so much changed the content of critical expressions as gave the population numerous new pretexts to engage in criticism of the regime. Even under the assumption that the nature of judiciary reviews as historical sources precludes us from making any claims about actual popular moods, and that these reviews reflect only official categories imposed on diverse individual opinions, it is nonetheless significant that officials continued to rely on legal categories used before the War and did not revise them to reflect any qualitative changes.<sup>6</sup>

- 4 It was the quantity, not the quality of "counter-revolutionary agitation" that changed, and quantity mattered. Since the prosecution of all counter-revolutionary crimes, covered by Article 58 in general, was implemented by many legal and extra-legal agencies (regular courts, railway courts, military tribunals, and, to a large extent, the NKVD), an attempt to summarize the effect of the War's outbreak in concrete numbers is a challenging task.<sup>7</sup> Statistics on the NKVD, presented in Table 1, show that both the absolute number of Article 58.10 cases, and their proportion to all counter-revolutionary crimes rose in 1941, peaked in 1942, and rapidly declined starting with 1943.

**Table 1. Number of convictions for counter-revolutionary crimes by the NKVD in 1939-1947<sup>8</sup>**

	1939	1940	1941	1942	1943	1944	1945	1946	1947
Total Article 58 convictions	63 889	71 806	75 411	124 406	78 441	75 109	123 248	123 294	78 810
Article 58.10 in particular	24 720	18 371	35 116	61 625	24 089	14 130	14 868	15 512	8 391
% of Article 58.10 convictions out of the total	38.7	25.5	46.5	49.5	30.7	18.8	12.1	12.5	10.6

- 5 Respective comprehensive statistics for the judiciary are unavailable to me, but reviews of court practice from the early war years confirm a dramatic rise both in the absolute and relative numbers of counter-revolutionary agitation cases in 1941-1942. For example, in April of 1941, the Gorky oblast court processed only 30 cases of counter-revolutionary crimes, including agitation. In May the number amounted to 28, but already in June it rose to 39, and soared in July to 171 cases. In the first 15 days of August 1941, 104 new cases were opened. Counterrevolutionary agitation made up over 80% of this rapid and marked surge.<sup>9</sup>
- 6 This increase notwithstanding, in the Soviet Union as a whole, the early years of the War did not break the record of convictions for counter-revolutionary agitation established during the Great Terror. In 1937, the NKVD alone convicted 234,301 people for this crime.<sup>10</sup> On the other hand, as Table 2 demonstrates, even in the crisis year of 1942 the total

number of convictions for all counter-revolutionary crimes, including sabotage, terrorism and so forth, was 279,651. Considering that in 1942 only about half of all NKVD Article 58 convictions dealt with agitation and propaganda, it is highly unlikely that the total number of Article 58.10 convictions exceeded the 1937 level. Moreover, the number of people convicted during the War for other types of crimes indicates that the prosecution of counter-revolutionary propaganda was not a primary concern for the Soviet system of justice. While the total number of persons convicted by courts in 1941-1945 for work discipline violations, according to the notorious Decree of June 26, 1940, exceeds 7,000,000,<sup>11</sup> the corresponding number of counter-revolutionary crimes convictions only reached 500,908, a mere 1/14<sup>th</sup> of the former number.

- 7 Why, then, is the study of legal prosecution during the War important? For one, the number of counter-revolutionary convictions in 1941-1942 dramatically increased compared to 1939-1940, indicating a new turn in how the Soviet government approached public opinion. Second, if we compare the total number of convictions in the whole category of counter-revolutionary crimes on the basis of published statistics from the wartime and the immediate pre- and post-war years (Table 2), we notice not only an overall increase in the number of cases starting in 1941, but also a sustained growth in the use of legal prosecution as opposed to extralegal (NKVD) repression. It was during the War that fortunes in a decades-long competition between legal and extralegal organs for the authority to implement Soviet laws<sup>12</sup> slowly, but, in the final outcome, irreversibly changed in favor of the former. In 1941, the part of counter-revolutionary crimes prosecuted through courts began to exceed that of the NKVD trials.
- 8 This proportional change had important implications. Even though both extralegal repressive organs and the courts acted within the same framework of criminal legislation, on the procedural level their practices were very different. NKVD trials were conducted swiftly behind closed doors, while judicial proceedings, at least in theory, had to conform to the rules of "socialist legality." Witnesses were called to testify in court, the accused had a right to a defense attorney, and trials ended with public verdicts. Even if the functioning of the legal system was not supposed to be completely transparent to laymen (as numerous Supreme Court secret instructions for judges indicate), these relatively open and formalized court proceedings inevitably disseminated knowledge of Soviet legal norms among the broader public.

**Table 2. The number of convictions for counter-revolutionary crimes by the NKVD and Soviet courts of all categories, 1939-1947<sup>13</sup>**

	1939	1940	1941	1942	1943	1944	1945	1946	1947
NKVD	63 889	71 806	75 411	124 406	78 441	75 109	123 248	123 294	78 810
Courts	54 415	31 208	86 865	155 245	126 380	119 448	152 691	128 125	129 826
Total number	118 304	103 014	162 276	279 651	204 821	194 557	275 939	251 419	208 636
% of cases handled by courts	45.9	30.3	53.5	55.5	61.7	61.3	55.3	50.9	62.2

- 9 This increasingly prominent role of the courts in the prosecution of political crimes after 1941 makes it especially important to establish the motivations behind Soviet legal policies and to analyze how court officials understood socialist legality at the time.

- 10 In order to assess possible wartime changes in this respect, it is first necessary to look at the general logic of Soviet legal policies regarding counter-revolutionary agitation. While the criminalization of alternative political opinions under Stalin is common historical knowledge, legal functionaries' approach to this form of political prosecution has received little attention from historians. The animated controversy over the nature of popular opinion in Stalinist society that has taken place in the past fifteen years has done little to explain why, in what manner, and to what purpose the state prosecuted people that allegedly expressed anti-Soviet sentiments.<sup>14</sup> Since most scholars approach outlawed speech "from below," in an attempt to discern the authentic political views of the Soviet population, they tend to ignore the institutional perspective. For those historians who, through the study of popular opinion, seek to demonstrate popular resistance against the Bolshevik regime, the reason why the regime wanted to suppress such resistance is self-evident.<sup>15</sup> For those scholars who, on the contrary, believe that popular opinion, even of an apparently dissenting kind, should not be interpreted as the citizens' rejection of Soviet rule and even demonstrates their identification with the dominant political discourse, the issue of prosecution is irrelevant.<sup>16</sup>
- 11 The only work that focuses on the legal prosecution of anti-Soviet agitation, the article by Sarah Davies, analyzes it predominately in quantitative, not qualitative terms. Davies describes how the prosecution of politically subversive speech fluctuated, in her own words, "from extreme to moderation," with periods characterized by the varying participation of legal and extra-legal agencies, and by alternations between the Bolshevik principle of class favoritism and the legal doctrine of individual responsibility.<sup>17</sup> However, she does not question the ultimate objectives of repressive policies and considers them solely as an instrument in suppressing dissent. Such an approach is, ultimately, reductionist, because it portrays law as a reaction to an already present social phenomenon (dissent) and disregards its constructive nature. In fact, Article 58.10, like any other law, did not merely enforce the social norm by punishing the crime. Instead, it created the norm by drawing the divide between accepted and unaccepted behavior.
- 12 From a constructivist perspective, the object of legal repression is not individual offenders but society at large. As Peter Holquist argues in his pioneering essay, state violence in the Bolshevik political system, to a significant extent, had a prophylactic character, and aimed at molding the population's structure along desired lines.<sup>18</sup> Although Holquist deals largely with extra-legal political repression, implemented by security organs, his argument can be extended to legal prosecution as well. By analyzing the objectives of the prosecution of political crimes via the court system, we can, therefore, refine our understanding of how Stalin's regime managed different segments of the Soviet population, and what kind of society was supposed to emerge as the result of these endeavors.
- 13 But how exactly, and to what purposes, did the Soviet system of justice attempt to reshape society? Did this system, in Holquist's words, aim at "molding society's human material into a more emancipated, conscious, and superior individual – the 'new man'?"<sup>19</sup> From my sources it is apparent that the judicial prosecution of counter-revolutionary agitation during the war had much less ambitious goals. Its ultimate objective was to preserve the *status quo* in the relationship between the population and the regime rather than to transform the political consciousness of Soviet citizens.
- 14 To begin with, judicial prosecution of counter-revolutionary agitation was directed at behavior, not thoughts. The law in question was not concerned with popular opinion *per*

se, let alone individual political views. Even though Article 58.10 was used *de facto* to ensure political conformity, the law on counterrevolutionary agitation concerned potential actions by the population at large, and not individual beliefs and opinions.<sup>20</sup> The very emergence and continuity of this legal norm was dictated by motives of state security, which in their turn reflected the politics of total war. The notorious Article 58 emerged in February 1927, at the height of the Soviet war scare of 1926-1927, when all counter-revolutionary crimes were consolidated into one article of a new criminal code.<sup>21</sup> The timing of this legislative changes explicitly point out developments that the law on counterrevolutionary agitation aimed to prevent: mass mobilization for the enemy's cause, which could either provoke or assist foreign military intervention. As has been persuasively argued in recent scholarship, the Great Terror itself, marked by the historic peak of Article 58.10 convictions, was, to a large extent, motivated by a new war scare and constituted an attempt to prevent the emergence of a "fifth column" that could rebel against the Soviet government and contribute to its defeat.<sup>22</sup> With *Operation Barbarossa*, foreign military intervention became a reality, providing the law's rationale with a resounding confirmation; at the same time, it became a serious test for the Soviet legal system. For the first time since the end of the Civil War, this system had to ensure state security while a war was being conducted on Soviet territory, and simultaneously observe the requirements of socialist legality in the (relatively) public environment of the court.

- 15 Unlike many instances of Soviet prewar "campaign justice," the numerical rise in counter-revolutionary agitation cases after the war's outbreak did not result from a governmental decree or legislative changes, which would direct Soviet courts' attention to a new perceived source of social danger.<sup>23</sup> On the contrary, sources unanimously indicate that more intensive legal prosecution was a response to an actual change in Soviet popular opinion, in its turn, provoked by the developments at the front. This response, initially, was somewhat inconsistent at the local level and, in any case, not orchestrated by higher authorities. As the Supreme Court put it later, "not all courts immediately readjusted themselves to the new conditions" after the war's outbreak, and many judges were regrettably unable "to leave behind the peace-time mentality."<sup>24</sup> Thus, at the same time as the number of people convicted for counter-revolutionary agitation drastically rose, higher judiciary officials chastised lower courts for excessive leniency.<sup>25</sup>
- 16 Yet the opposite excess, severe terms of punishment, also created serious problems. Within weeks after June 22, 1941, Soviet courts, even those far-removed from the front, began to prosecute counter-revolutionary agitation according to Part 2 of Article 58.10 (instead of Part 1), which dealt with the conditions of wartime. As a result, the same actions that, before June 1941, could lead to as little as six months of imprisonment (although the usual prison terms for this offense were longer, ranging between two and ten years),<sup>26</sup> now offenders faced the prospect of at least ten years of incarceration, or death, unless mitigating circumstances were found (which, according to the letter of the law, was impossible).<sup>27</sup> The courts, inundated with counter-revolutionary cases, often did not hesitate to pass summary justice, resulting in a high number of capital punishment sentences. For example, from 2,229 people indicted in April-August 1942 for counter-revolutionary agitation by Kazakh SSR courts, 82.1% were convicted to either ten years of imprisonment or death, with an almost equal distribution between the two categories. Since many of the convicts had close relatives fighting in the Red Army, excessive capital sentences and other severe terms of punishment were potentially dangerous for the regime.<sup>28</sup> How could the courts, then, navigate between these extremes and avoid the

danger of either condoning the population's disloyalty or provoking it with their own actions?

- 17 As a response to the initial confusion at the local level, in 1942 the Supreme Court issued a number of secret instructions to lower courts, ensuring that prosecution would extend to the widest possible groups of offenders, but also by giving the courts extensive guidelines in order to reduce the number of controversial verdicts and expedite legal proceedings. I base the further part of my article on one such lengthy document, dated with June 1942. As this document persuasively demonstrates, to achieve this first goal, the Supreme Court redefined one of the basic notions of legal theory – subjective culpability, and thereby extended the application of Article 58.10. Subjective culpability in Soviet criminal legislation, like in other modern legal systems, was based on the presumption that guilt depends not only on the person's committing an actual criminal deed, but on the presence or absence of a conscious intent to commit such a deed. This presumption precludes judges from passing a verdict on the grounds of the action alone. As regards counter-revolutionary agitation in particular, according to the law, it was defined as a purposeful exertion of influence over the masses, in order to undermine their loyalty to the Soviet regime. Yet, the Supreme Court admitted, in many cases such a purpose was missing, and anti-Soviet expressions merely reflected the personal anti-Soviet sentiments of the speakers. Sometimes, no negative attitude to Soviet rule was voiced at all, while the speaker criticized only particular governmental campaigns. Thus the prosecuted activity often did not display the features of agitation. However, the Supreme Court claimed, the application of Article 58.10 to such cases was completely legitimate. It declared that, under the new political circumstances, criminal intent no longer referred to the desire to overthrow Soviet rule, but concerned, instead, the very act of anti-Soviet speech: "every person of sound mind [who expresses anti-Soviet views] *wants* to make anti-Soviet expressions and *predicts* that his expression will bear an anti-Soviet nature."<sup>29</sup>
- 18 At the same time, the official approach to culpability in counter-revolutionary agitation cases displayed a remarkable inconsistency. On the one hand, a conscious intent to commit a criminal act was a necessary precondition of bearing full responsibility before the law. On the other hand, active agency in counter-revolutionary agitation cases was assigned to external forces. In the first post-revolutionary years, the Supreme Court explained, anti-Soviet agitation had consisted in open calls to overthrow the Soviet regime. With the triumph of socialism, its enemies resorted instead to covert anti-Soviet activities and had been trying to influence less conscious and politically unstable elements indirectly. On what grounds, then, should these passive tools be punished for the actions that they did not really mean to commit? According to the Criminal Code, the crime of counter-revolutionary agitation did not have circumstances that could reduce culpability and, by definition, was a pre-meditated act. There could not have been counter-revolutionary agitation committed in the heat of the moment or by carelessness. Nevertheless, the Supreme Court insisted that offenders' guilt could have different degrees, and strongly recommended that lower courts, when passing verdicts, take into account the "personality" of the accused.
- 19 What did the "personality" mean in judicial practice? According to historians of the Soviet system of justice, throughout the 1920s and 1930s, this system alternated between an approach they describe as "class favoritism," that is, the preferential treatment of criminals with a working class background, and the opposite principle of individual



responsibility, whereby only the elements of the offense (that is, action and intent) determine the degree of punishment.<sup>30</sup> My sources indicate that this juxtaposition of class favoritism to individual responsibility does not always adequately describe the logic of legal prosecution. According to the Supreme Court's instructions, class affiliation was only important inasmuch as it allowed for evaluating subjective culpability.

- 20 In particular, the Supreme Court recommended that lower courts pay special attention to whether anti-Soviet speech followed from a systematic world-view or was somehow accidental to the culprit. In establishing this fact, judges ought not to rely on personal confessions of guilt or declarations of innocence. Instead, the courts were advised to derive the connections between personal beliefs and public expressions from indirect evidence: the suspects' age, gender, education, criminal record, as well as their familial ties and social background.
- 21 Instead of cultivating "class favoritism," Soviet judges turned to the social origin of the accused in order to establish his or her individual guilt. To determine the degree of guilt and quantify the social danger posed by the accused, social knowledge was utilized, similar to what Peter Holquist has identified as the operative conceptual framework of extra-legal political repression: certain social categories were seen as more potentially dangerous than others.<sup>31</sup> Besides class, other factors, such as age and gender, were seen as no less significant. Why were these other factors so important? According to Bolshevik doctrine, each social group was assigned a fixed political worldview. Consequently, the working classes could not harbor genuine anti-Soviet sentiments. The fact that many workers and peasants did engage in criticism of the regime was explained by personal characteristics that prevented the offenders from fully realizing their class consciousness.
- 22 The age of convicts is the issue most often discussed in a report concerning judicial errors and unjustifiably severe sentences. In numerous cases, persons condemned to death for counter-revolutionary agitation were already in their 70s and 80s, hence the Supreme Court stated that their sentences were not only unnecessary severe, but also did not reflect the nature of the crime correctly. Anti-Soviet expressions, in these cases, allegedly did not follow from a developed ideological conviction, but were to a significant extent the result of illiteracy, cultural backwardness of people unable, often in view of their advanced age, to combat, in their consciousness, the survivals of capitalism, under the influence of which they had lived a greater part of their lives.<sup>32</sup>
- 23 Gender was also considered a significant factor in determining culpability. Peasant women, in particular, allegedly tended to indulge in anti-Soviet speech not out of ideological conviction, but in connection to the difficulties of everyday life, and their expressions were often not a result of systematic political views, but were produced by their "cultural and political backwardness."<sup>33</sup> Women, especially of older age and lower educational background, were also perceived as excessively emotional and irrational, and therefore the Supreme Court advised not taking their words literally in every case.<sup>34</sup>
- 24 Personal histories of the convicts were another important factor for deciding a sentence. The 1942 report mentions a disproportionate percentage of "persons compromised in the past or present" among those convicted for anti-Soviet agitation (115 out of the total 200 cases, surveyed by the Supreme Court in November 1941-March 1942, or 58%).<sup>35</sup> The official interpretation of this fact – that the people marginalized by the regime tended to dislike it – is reasonable, but cannot fully explain this high percentage and should be complemented with the assumption that people discredited by their past were



particularly prone to be denounced and convicted. Indeed, a past criminal record could play a fateful role, as demonstrated by a case of a lower court's incompetence, which concerned a man who had been previously convicted to seven years imprisonment for anti-Soviet agitation, but received only a five year sentence for a repeated crime in the same category – an unacceptable act of leniency in the eyes of the Supreme Court.<sup>36</sup> The nature of offense itself was irrelevant compared to the very fact of the previous conviction, which, in its turn, supposedly indicated the convict's consistent anti-Soviet attitude.

- 25 The issue of "personality" was not limited to the characteristics of the individuals brought before the court, and extended to their social networks, first of all, family. The relatives of the "former" people, kulaks, and other alienated social elements were an object of special attention. As the case of the engineer Turchin demonstrates, the presence or absence of such a relationship could become a matter of life or death. In August 1941, Turchin was sentenced by the Gorki oblast court to ten years of imprisonment and five years of disenfranchisement for the crime of anti-Soviet agitation. The Chief Prosecutor of the RSFSR protested that the sentence was insufficiently severe, pointing out that Turchin's father had been a large real estate owner before 1917 and, after the revolution, had been disenfranchised. A renewed criminal proceeding resulted in a capital punishment sentence. The convict's appeal to the Supreme Court of the RSFSR was dismissed. However, the Supreme Court of the USSR discovered that both the initial and revised sentences were based on false grounds: documents contained in the case proved that Turchin's father had been disenfranchised by mistake, because the value of his pre-revolutionary property was, in fact, relatively insignificant. Consequently, the Supreme Court commuted the sentence to six years of imprisonment and approved Turchin's petition to be sent to the front, suspending his sentence for the time of hostilities.<sup>37</sup>
- 26 If even a familial relationship with a person alienated by the Soviet regime could turn into an aggravating circumstance in the court, the issue of the culpability of such persons themselves, in practice, sometimes was decided automatically. Yet, belying the "class favoritism" theory, such instances were perceived as a violation of socialist legality. The Supreme Court's report mentions, as an example of unacceptable negligence and a formalistic approach, a case of a woman guilty of spreading panic but convicted not for this relatively minor offense, but for the more serious crime of counter-revolutionary agitation, only on the basis of the woman's gentry origin.<sup>38</sup>
- 27 The persecution of particular social groups was not an ultimate goal of the Soviet legal system. Instead, the Supreme Court emphasized the need to detect and eliminate sources of socially dangerous ideas. The repetitiveness of the content of "anti-Soviet" speech, for legal organs, could not have possibly come from repeated observations of the same realities by many different individuals. Instead, the Supreme Court argued, it "suggests that [...] anti-Soviet expressions emerge not accidentally, and not in isolation from one another, but perhaps are directed by masked enemies of the Soviet order or by direct agents of Fascism." Unfortunately, the document continues, "it should be noted that our judiciary and investigative organs pay little attention to this aspect of the issue."<sup>39</sup>
- 28 As an example of such negligence, the report quotes a case which combines many themes mentioned above: age, gender, class, and adds to them ethnic bias. In early July 1941, a certain Rigel', a 20-year old female worker in a Baku textile factory, was heard talking about the rapid advance of the enemy and, allegedly, claimed that the German Army was

already approaching the capital of Soviet Azerbaijan. To make matters worse, she "expressed a positive attitude toward the leader of the Nazi state." The investigation, the report relates, correctly assumed that the "underdeveloped young woman" could not have been the author of such fabrications, and thus the possibility arose that she had been a "tool in somebody's hands." Faced with questions about her sources of information, Rigel' at first accused her colleagues at the factory, but, when pressed further, eventually declared that her father – an ethnic German – had incited her to spread the rumors. In a personal confrontation with her father, she changed her testimony once again, and, as a result, the father was interrogated for expressing anti-Soviet views, but the charge of instigation against him was dropped. The Supreme Court noted that this lower court, which did not bother to find the source of rumors and let a probable instigator get away, was guilty of an improper lack of vigilance.<sup>40</sup>

- 29 As demonstrated in this example, official suspicions about the political loyalty of certain ethnic groups affected the prosecution of counter-revolutionary agitation. Yet this case also testifies to the continuing high importance of gender categories, even in the face of ethnic scapegoating: the young female worker Rigel', born to a German father, could have been convicted as a politically alien element herself, but was excused due to her inferior place in the network of gender and family relations.
- 30 While all the categories and approaches discussed above equally apply to the prosecution of counter-revolutionary agitation in the 1930s, the war further slowed down the project of social transformation through law enforcement. Even though subjective culpability was seen as a crucial concept for implementing justice, overworked judges were advised to determine this culpability not so much on the basis of individual behavior but of general social categories characterizing the accused. Under wartime conditions, the Supreme Court placed a higher emphasis on age and gender in determining culpability and unwillingly acknowledged the failure of 20 years of Soviet rule to reform the politically backward masses, whereas lower courts were besought, once again, not to look for developed political consciousness among those social groups where it could not be found. Thereby legal policy reaffirmed traditional class and gender hierarchies, with old peasant women at the bottom, but a significant proportion of the Soviet population only barely above them. Another aspect, with far-reaching implications for subsequent Soviet history, concerned the emergence of new potentially unreformable population categories, defined by ethnicity. Overall, an accelerated transformation of the political worldview of large population strata was out the question for the judiciary.
- 31 There was another consideration that further reduced the urgency of socially transformative policies during the war. Assigning the highest degree of responsibility for anti-Soviet expressions to adult men, the regime portrayed this population category as crucial for preserving the social order – an attitude that was reaffirmed in wartime. Old people and women could be politically "unstable" and personally immature, gullible, emotional and irrational, yet as long as fighting-age men remained loyal and bravely fought in the Red Army, it did not matter so much what their mothers, fathers and wives were thinking and saying. The regime did not hope to reshape these "ill-fit" categories into "new men," and preferred to keep the *status quo*, while simultaneously removing the most dangerous individuals from society.
- 32 However, the prosecution of counter-revolutionary agitation had another, more long-term and less direct effect on broader masses of the population. From indirect evidence it becomes clear that the law on counter-revolutionary agitation was also seen as an

instrument of inculcating official values, and not only through fear of punishment. The courts were aware of citizens who tried to instrumentalize the law without adopting the ideology it was supposed to foster. Thus the Supreme Court's report warns that not all testimony should be trusted, and that GULAG inmates and communal apartment dwellers in particular were likely to denounce their fellows, putting self-interest before ideological considerations.<sup>41</sup> By implication, truly reliable evidence would come from those who subscribed to the official ideology. However, this aspect of punitive policy was never explicitly discussed in judicial reports, and severe punishment for counter-revolutionary agitation, practiced during the war, testifies that legal organs believed surgery to be the most efficient kind of social prophylaxis.

- 33 How effective was the legal repression of counter-revolutionary agitation in raising popular support of Stalin's regime? Conversely, how can we assess the upsurge in the incidence of "counter-revolutionary" speech in the first years of the war? It would be easy to assume that at this time, marked by a series of dramatic losses, many people reassessed their loyalty to the Soviet state and became more critical of official propaganda. This was certainly the case, but it is not the whole picture. For every reported case of counter-revolutionary agitation there were a few witnesses willing to testify in court for the prosecution. Moreover, the majority of these cases, as the Supreme Court's report admits, were based on voluntary denunciations.<sup>42</sup> In other words, whereas many Soviet citizens expressed criticism of the regime, still more considered such criticism illegal and felt obliged to report on it to the authorities and provide testimony that would ensure severe punishment of the culprits. It is ultimately irrelevant whether all denunciations came out of ideological conviction. Much more important is that, by participating in the implementation of official judicial policy, and by witnessing the persecution of individuals who transgressed the law, Soviet citizens had an opportunity to learn what kinds of views were considered "counter-revolutionary" and therefore ought not to be expressed, at least in public. As the proportion of counter-revolutionary crime tried in courts was increasing, so was growing the educative significance of Article 58.10.
- 34 Did the accessibility of this message affect actual popular opinion? The Supreme Court's report acknowledges that the wave of "counter-revolutionary" speech subsided only when the situation on the front changed in favor of the Red Army.<sup>43</sup> Undoubtedly, the eventual Soviet victory did much more to restore the population's loyalty to the regime than any policy consciously applied to this end. However, by analyzing the logic of judiciary prosecution of counter-revolutionary agitation, we can better understand not only the factors that determined the fate of many victims of political repression, but also the nature of the Soviet regime at the time. From judicial sources, this regime appears extremely interventionist, not willing to let a single individual's behavior out of its grasp, and also one with few scruples about inflicting severe punishments. As the result of the redefinition of subjective culpability, expressed in the Supreme Court's instructions, more, not fewer people could be brought to court for politically unacceptable expressions. Therefore, the changes in legal politics that became a reaction to the increase of counter-revolutionary agitation cases in the first years of the war can hardly be termed as a liberalization. Yet, the regime, as it manifested itself through its law enforcement system, also appears surprisingly modest and conservative in its ambitions of transforming the population's consciousness. On the individual level outward actions, not private thoughts remained the scope of the court's objectives. On the social level, it

was traditional hierarchies the courts sought to preserve, not to radically reshape society. Somewhat paradoxically, both these aspects – interventionism and conservatism – were amplified after 1941.

## NOTES

2. Peter H. Solomon, *Soviet Criminal Justice under Stalin* (Cambridge, 1996).
3. Sarah Davies, "The Crime of Anti-Soviet Agitation in the Soviet Union in the 1930s," *Cahiers du monde russe*, 39, 1-2 (1998): 149-167.
4. On the content of prewar popular opinion, see: Sarah Davies, *Popular Opinion in Stalin's Russia: Terror, Propaganda, and Dissent, 1934-1941* (Cambridge: Cambridge University Press, 1997); Lesley A. Rimmel, "Svodki and popular opinion in Stalinist Leningrad," *Cahiers du monde russe*, 40, 1-2 (1999): 217-234.
5. GARF (Gosudarstvennyi arhiv Rossiiskoi Federatsii), f. R-9474, op. 16, d. 268: 258-259 reverse. Numerous NKVD and the Party reports on the political moods of the population confirm the content of anti-Soviet expressions recorded in judiciary documents. See, for example: *Organy gosudarstvennoi bezopasnosti v Velikoi Otechestvennoi voine. Sbornik dokumentov*. Vol. 2 *Nachalo* (M.: Rus', 2000), 68-72, 82, 93-95, 167-169; *Iz raionov oblasti soobshchaliut... Svobodnye ot okkupatsii raiony Leningradskoi oblasti v gody Velikoi Otechestvennoi voiny: Sbornik dokumentov* (SPb.: Dmitrii Bulanin, 2006), 196-197, 203-205, 219-226.
6. On the problem of using judiciary sources for the study of popular opinion, see: Mark Edele, "More than just Stalinists: The Political Sentiments of Victors 1945-1953," in Juliane Fürst, ed., *Late Stalinist Russia: Society between Reconstruction and Reinvention*, (London – New York: Routledge, 2006), 167-191, here 167-168.
7. On the difficulties of estimation, see: Sarah Davies, "The Crime of Anti-Soviet Agitation," 165, endnote 6.
8. Nicolas Werth, Sergei Mironenko, eds., *Istoriia stalinskogo Gulaga: konets 1920-kh – pervaiia polovina 1950-kh godov*, Vol. 1 *Massovye repressii v SSSR* (M.: ROSSPEN, 2004), 608.
9. GARF, f. R-9474, op. 16, d. 216, l. 7.
10. *Istoriia stalinskogo Gulaga*, Vol. 1, 609.
11. *Ibidem*, 623.
12. A significant part of Peter Solomon's work *Soviet Criminal Justice under* is devoted to the history of this struggle.
13. Compiled on the basis of post-war statistics published in Werth, Mironenko, eds., *Istoriia stalinskogo Gulaga*, Vol. 1 *Massovye repressii v SSSR*, 608 and 621.
14. For an overview of the debate, see: Jan Plamper, "Beyond Binaries: Popular Opinion in Stalinism," in Paul Corner, ed., *Popular Opinion in Totalitarian Regimes: Fascism, Nazism, Communism* (Oxford: Oxford University Press, 2009), 64-80, here 66-69.
15. Besides the monograph by Sarah Davies and the article of Lesley Rimmel quoted in footnote four, some prominent social historians subscribe to this view, for example:

Sheila Fitzpatrick, "Popular Opinion in Russia under pre-war Stalinism," in Corner, ed. *Popular Opinion*, 17-32; Lynn Viola, "Popular Resistance in the the Stalinist 1930s: Soliloquy of a Devil's Advocate," *Kritika: Explorations in Russian and Eurasian History*, 1, 1 (2000): 45-69.

16. Here I refer primarily to Jochen Hellbeck, who is the most vocal supporter of this perspective. See his essays: "Speaking Out: Languages of Affirmation and Dissent in Stalinist Russia," *Kritika: Explorations in Russian and Eurasian History*, 1, 1 (2000): 71-96; and "Liberation from Autonomy: Mapping Self-Understanding in Stalin's Time," in Corner, ed., *Popular Opinion*, 49-63.

17. Davies, "The Crime of Anti-Soviet Agitation."

18. Peter Holquist, "State Violence as Technique: The Logic of Violence in Soviet Totalitarianism," in Amir Weiner, ed., *Landscaping the Human Garden: Twentieth-Century Population Management in a Comparative Perspective* (Stanford: Stanford University Press, 2003), 19-45, here 20.

19. Peter Holquist, " 'Information is Alpha and Omega of Our Work': Bolshevik Surveillance in its Pan-European Context," *The Journal of Modern History*, 69, 3 (1997): 415-450, here 417.

20. A curious testimony to the application of socialist legality is mentioned in a protocol of a closed meeting of the People Commissariat of Justice of the Azeri SSR on January 26, 1942: an anonymous *kolkhoznik* was accused in counter-revolutionary propaganda on the grounds of a testimony of the *kolkhoz*'s head, who allegedly heard anti-Soviet talk from an open window while he was passing by the *kolkhoznik*'s house. The accused managed to get himself released by claiming that there had been no witnesses to other people being in the room at the time, and unless the contrary could be proven, he might have been "propagandizing among himself," which constituted no crime. GARF, f. 9474, op. 16, d. 254: 20-35.

21. Sarah Davies, writing about this legislative change, ignores its war-scare context: Davies, "The Crime of Anti-Soviet Agitation," 150. On the long-term effects of the war scare on Soviet politics and economics, see: John P. Sontag, "The Soviet War Scare of 1926-27" *Russian Review*, 34, 1 (1975): 66-77; and Sheila Fitzpatrick, "The Foreign Threat during the First Five Year Plan," *Soviet Union/Union Soviétique*, 5 (1978): 26-35.

22. See Oleg Khlevniuk, "The Objectives of the Great Terror, 1937-1938," in Julian Cooper, Maureen Perrie, and E. A. Rees, eds., *Soviet History, 1917-53: Essays in Honour of R.W. Davies* (London, 1995), 158-176; Idem, "The Reasons for the 'Great Terror': The Foreign Political Aspect," *Annali della Fondazione Giangiacomo Feltrinelli* (1998), 159-169; Hiroaki Kuromiya, "Accounting for the Great Terror," *Jahrbücher für Geschichte Osteuropas*, Neue Folge, 53, 1 (2005): 86-101.

23. On campaign justice in the 1920s and 30s, see Solomon, *Soviet Criminal Justice*, 81-110.

24. GARF, f. R-9474, op. 16, d. 269, l. 260-260 reverse.

25. See, for instance: GARF, f. R-9474, op. 16, d. 218, l. 1-6.

26. See, for example, a report of the Supreme Court of Kyrgyz SSR on surveyed criminal cases from 1937-1939, dated with December 28, 1940: GARF, f. R-9474, op. 16, d. 216, l. 1-23.

27. GARF, f. R-9474, op. 16, d. 269, l. 261.

28. Ibidem, 262.

29. Ibidem, 257 reverse, italics mine.

30. Davies, "The Crime of Anti-Soviet Agitation," 151; Solomon, *Soviet Criminal Justice*, 33-34.
  31. Holquist, "State Violence as Technique," 23-24.
  32. GARF, f. R-9474, op. 16, d. 269, l. 261 reverse.
  33. Ibidem, l. 263 reverse.
  34. Ibidem, l. 263. This approach fully corresponds to the official view of peasant women's political consciousness during the 1920s and 30s. See: Lynne Viola, "Bab'i Bunty and Peasant Women's Protest during Collectivization," *Russian Review*, 45, 1 (1986): 23-42.
  35. GARF, f. R-9474, op. 16, d. 269, l. 260 reverse.
  36. Ibidem, l. 260 reverse.
  37. Ibidem, l. 276 reverse, l. 277 reverse.
  38. Ibidem, l. 264 reverse.
  39. Ibidem, l. 269.
  40. Ibidem, l. 267 reverse.
  41. Ibidem, l. 268 reverse.
  42. Ibidem, l. 268.
  43. GARF, f. R-9474, op. 16, d. 269, l. 265.
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## ABSTRACTS

### Abstract

This article examines the politics of legal prosecution of politically subversive speech qualified as "counterrevolutionary propaganda and agitation" according to Article 58.10 of the Soviet Criminal Code in 1941-1942. These years saw a marked rise in the number of trials under this article, which reflected negative popular opinion about the initial Soviet war losses. The increased severity of punishment was dictated by fears of a popular uprising. At the same time, the supreme judicial organs were aware that the excessive punishment of civilians might undermine the morale of Red Army soldiers, most of whom had families on the home front. Soviet courts, therefore, had to strike an uneasy balance between ensuring state security and preserving the loyalty of the population. To do so, the Supreme Court provided detailed instructions that admonished lower courts to assess the crime in view of its social danger, determined by the "personality" of the accused rather than the nature of the offense. However, the article argues, this emphasis on "personality" should not be interpreted as an attempt to reshape society in a radical way. In fact, the main objective of the legal repression of "counterrevolutionary agitation" was to preserve the *status quo* in the relationship between the Soviet population and Stalin's regime. The courts were advised to consider the culprit's personality in terms of age, gender, and class, which affirmed traditional social hierarchies. Transforming the population's consciousness was not a priority for the judicial system, and it contributed to this transformation only indirectly, by involving broader population in trials as witnesses and audience.



## Résumé

Cet article examine la politique des poursuites judiciaires engagées en 1941-1942 dans le but de sanctionner les propos politiquement subversifs qualifiés de « propagande et d'agitation contre-révolutionnaire » par l'article 58.10 du code pénal soviétique. Ces années ont vu une augmentation significative du nombre des procès relevant de cet article, ce qui témoigne d'une opinion populaire négative sur les premières pertes de guerre soviétiques. La sévérité accrue des peines était dictée par la peur d'un soulèvement populaire. Parallèlement, les organes judiciaires suprêmes étaient conscients que l'application excessive de peines à l'encontre des civils pouvait saper le moral des soldats de l'Armée rouge dont la plupart avaient leur famille à l'arrière. Dès lors, les cours de justice soviétiques durent manœuvrer délicatement afin d'assurer la sécurité de l'État tout en conservant la loyauté de la population. Pour ce faire, la Cour suprême fournit des instructions détaillées aux cours basses, les exhortant à juger les crimes, moins en fonction de la nature de l'offense qu'en fonction de leur danger social, déterminé par la « personnalité » de l'accusé. Cependant, l'auteur précise que cet accent mis sur la personnalité ne saurait être interprété comme une tentative de refonte radicale de la société. De fait, l'objectif principal de la répression judiciaire de l'« agitation contre-révolutionnaire » était de maintenir le *statu quo* dans les relations entre la population soviétique et le régime stalinien. Il fut recommandé aux cours de prendre en considération la personnalité de l'inculpé en termes d'âge, de genre et de classe pour assurer le maintien des hiérarchies sociales traditionnelles. Le système judiciaire n'avait pas pour priorité de transformer la conscience du peuple, il n'y a contribué que de façon indirecte en impliquant davantage de monde dans les procès en qualité de témoins et de public.

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